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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/815,734	03/23/2001	George Harry Hoffman	41556/03972 (RS11P006)	6222
22428	7590	08/11/2004	EXAMINER	
FOLEY AND LARDNER SUITE 500 3000 K STREET NW WASHINGTON, DC 20007			GORT, ELAINE L	
			ART UNIT	PAPER NUMBER
			3627	

DATE MAILED: 08/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

### Office Action Summary

Application No.

09/815,734

Applicant(s)

HOFFMAN ET AL.

Examiner

Elaine Gort

Art Unit

3627

NW

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 17 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 1-6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 September 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 9/26/01; 6/24/03
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: IDS: 10/22/02

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election without traverse of claims 7-18 in Paper No. 5/17/04 is acknowledged.

Claims 1-6 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 5/17/04.

### *Double Patenting*

2. Claims 7-18 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over all the claims filed in the following Applications because they are not patentably distinct:

09/815559  
09/815590  
09/815660  
09/815688  
09/815727  
09/815729  
09/815731  
09/815759  
09/815792  
09/815813  
09/815864  
09/815894  
09/815899  
09/816033  
09/816075  
09/816083  
09/816092  
09/816151  
09/816160  
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Art Unit: 3627

09/816203  
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09/816503  
09/816507  
09/816536  
09/816555  
09/816560  
09/816561  
09/816567  
09/816582  
09/816881  
09/816922  
09/816944

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 7-18 are rejected because they lack patentable utility. Claims 7-18 merely claim the manipulation of data ("logic for" or "code for") but perform no concrete, useful or tangible result. One example of how this rejection may be overcome is by positively claiming the generation of a report or output of data.

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 7-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 recites the limitation "the sale" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 9 recites the limitation "The system of claim 9" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 13 recites the limitation "the sale" in line 5. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**8. Claims 7-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamamoto et al. (US Patent 5,914,878) in view of Murak & Associates.**

Yamamoto et al. discloses a system/computer program product for processed product supply chain reporting comprising:

Logic for/Code for receiving data from a plurality of stores of a supply chain utilizing a network, the data including information relating to product distributed to and

sold by the stores (such as sales information received from retail outlets, see column 3 lines 31+ and lines 65+);

Logic for/Code for sending the data from the stores to a supply chain manager utilizing the network (for example the data is sent from the retail outlets via a public communications line network to a host computer/"supply chain manager", column 8, line 18);

Logic for/Code for using the data collected at the supply chain manager (such as when the host computer/"supply chain manager" uses the collected data from the outlets for forecasting, column 8 lines 13+); and

(Regarding claims 12 and 18) Where the system utilizes a network-based interface (such as the POS terminals on the public communications line network constitute "network-based interfaces", see column 8 lines 1-20);

But Yamamoto et al. is silent regarding the following:

The collection of data to determine a percentage of cost attributable to the processed product using information relating to the amount of processed product distributed to the stores and the sale of finished product by the stores;

(Regarding claims 8 and 14) Where the stores include restaurants;

(Regarding claims 9 and 15) Where the processed product includes food;

(Regarding claims 10 and 16) where the information includes an amount of the finished product; and

(Regarding claims 11 and 17) Where the information includes an amount of the processed product.

Murak & Associates discloses that it is known in the art of supply chain reporting to determine a percentage of cost attributable to the processed product (such as the cost of goods sold as a percentage of revenues) utilizing information relating to the amount of processed product distributed to the stores (such as cost of the goods sold which is inherently based on the quantity and cost of the inventory/goods related to the goods sold) and the sale of finished product by the stores (such as the revenue generated which inherently is based on the quantity sold and the sales price) for financial control and analysis in managing company expenses. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the system of Yamamoto et al. with the cost of goods sold as a percentage of revenues calculation and related data collection as taught by Murak & Associates, in order to provide financial control and analysis in managing company expenses.

(Regarding claims 8-11 and 14-17) Examiner takes Official Notice that it is old and well known in the art of supply chains to use networked supply chains for restaurants which use processed products to make finished products for automating the procurement of restaurant foods and/or tracking sales of food items. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the system of Yamamoto et al. and Murak & Associates, modified above, for use at a restaurant that converts processed products to finished products as taught by Examiner's Official Notice, in order to automate the procurement of restaurant foods and/or tracking the sales of food items.



***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elaine Gort whose telephone number is (703)308-6391. The examiner can normally be reached on Monday through Thursday from 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski, can be reached at (703)308-5183. The fax phone number for the organization where this application or processing is assigned is (703)305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1113.



Elaine Gort  
Examiner  
3627

July 26, 2004